IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 79 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AJITKUMAR PANCHAMLAL JAIN

Versus

COLLECTOR & DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 79 of 2002

MR NM KAPADIA for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 17.10.2001 passed by the Collector and

District Magistrate, Ahmedabad in exercise of powers under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The authority observed that the activities of the petitioner are prejudicial to the maintenance of supplies of kerosene under the public distribution system. After recording satisfaction that less drastic remedy is not posssible to be resorted to and in order that the petitioner may be immediately prevented from pursuing his illegal activities, he is required to be detained under PBM, the impugned order came to be passed.

2. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds stated in the petition. However, learned Advocate Mr. Kapadia appearing for the petitioner has restricted his argument to the fact that a representation made on behalf of the detenu addressed to the District Collector on 24.12.2001 alongwith affidavits of Aslum Ajgarbhai Ansari, Akbarsha Atishsha, Sanjay Jayprakash Soni and Abdul Ashish Mahammedbhai Qureshi, has been rejected by the detaining authority without undertaking the exercise to verify and cross-check the contents in the affidavits, which indicate that their signatures were obtained under coercion and that their statements were also recorded by the authority under coercion.

3. Learned Assistant Government Pleader Mr. S.S.Patel who represents respondent Nos. 1, 3 and 4 has opposed to this petition. Respondent No.2 Union of India is represented by Mrs. Dawawala. Affidavits-in-reply are filed on behalf of the respondents.

4. Having regard to the rival side contentions, it is clear that the affidavit-in-reply filed on behalf of the respondent State does not indicate any exercise to have been undertaken by the Government for ascertaining whether there is substance in the affidavits sent alongwith the representation, which go contrary to the case of the sponsoring authority. The representation therefore cannot be said to have been considered in its proper perspective. The right of the detenu of making an effective representation is infringed and his continued detention would be vitiated. The petition therefore deserves to be allowed and the same is allowed.

5. Order of detention dated 17.10.2001 passed by the Collector and District Magistrate, Ahmedabad is quashed and set aside. Detenu Ajitkumar Panchamlal Jain be released from detention forthwith, if not required in any

other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas